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FIRST GENERAL COUNSEL'S REPORT

RAD REFERRAL: 16L-06

DATE RECEIVED: April 14, 2016

DATE OF NOTIFICATIONS: April 22, 2016 and June 16, 2016

RESPONSE RECEIVED: July 20, 2016

DATE ACTIVATED: November 9, 2016

EARLIEST SOL: September 24, 2018

ELECTION CYCLES: 2014 and 2016

SOURCE:

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RESPONDENTS:

Rohrabacher for Congress and Jen Slater in her official capacity as treasurer
Jack Wu

**RELEVANT STATUTES
AND REGULATIONS:**

52 U.S.C. § 30102(b), (c)

52 U.S.C. § 30104(a), (b)

52 U.S.C. § 30114(b)

11 C.F.R. § 102.9

11 C.F.R. § 102.15

11 C.F.R. § 104.3

11 C.F.R. § 104.14(d)

INTERNAL REPORTS CHECKED:

Disclosure Reports

FEDERAL AGENCIES CHECKED:

None

I. INTRODUCTION

The Reports Analysis Division ("RAD") referred Rohrabacher for Congress and Jen Slater in her official capacity as treasurer (the "Committee") and Jack Wu, the Committee's former treasurer, to the Office of the General Counsel ("OGC") for potential violations of the Federal Election Campaign Act of 1971, as amended (the "Act"), arising from Wu's embezzlement of over \$200,000 of Committee funds. We recommend that the Commission open a Matter Under Review ("MUR"); find reason to believe that the Committee violated 52 U.S.C. §§ 30102(c) and 30104(b) by failing to keep complete records and file accurate reports; and find

1 reason to believe that Wu knowingly and willfully violated 52 U.S.C. §§ 30102(b)(3) and (c),
2 30104(b), and 30114(b)(1) by converting Committee funds for personal use, commingling
3 Committee funds with his own, and failing to keep complete records and file accurate reports
4 with the Commission. We also recommend that the Commission authorize an investigation
5 including the use of compulsory process, if necessary, to determine the extent of Wu's
6 embezzlement scheme, the amount in violation, and whether the Committee has disclosed all of
7 Wu's unauthorized activity.

8 II. FACTUAL BACKGROUND

9 A. Wu's Embezzlement Scheme

10 The Committee is the principal campaign committee for longtime California
11 Congressman Dana Rohrabacher. In 2005, Wu became treasurer of the Committee.¹

12 On or about May 20, 2015, the Committee's new fundraising vendor discovered a
13 significant discrepancy between the cash on hand reported by Wu in the Committee's most
14 recent disclosure report (\$190,872) and the actual balance in the Committee's bank account
15 (\$87).² After a brief investigation, the Committee confirmed that Wu had been making
16 unauthorized disbursements.³ Wu admitted that he had misappropriated funds and eventually
17 gave the Committee a spreadsheet summarizing unauthorized activity in the amount of \$173,500

¹ Amended Statement of Organization, Committee to Re-Elect Congressman Dana Rohrabacher (Feb. 24, 2005) (amending the treasurer information to name Wu as the treasurer).

² RAD Referral of Rohrabacher for Congress, 16L-06 (Apr. 14, 2016) ("Referral") at 3; Resp. at 2 (July 20, 2016).

³ Resp. at 2.

1 during 2014 and 2015.⁴ The Committee fired Wu and filed a complaint against him with the
2 Orange County District Attorney's Office (the "DA's Office" or "DA").⁵

3 After an investigation and forensic audit of the Committee, the DA's Office concluded
4 that Wu had embezzled \$238,347.15 from the Committee by writing checks to himself and his
5 companies, "W. Jane Company" and "Wubell."⁶ For the most part, Wu concealed his scheme by
6 failing to disclose his unauthorized withdrawals on the Committee's reports; although, on
7 occasion, he would disclose his withdrawals as seemingly legitimate disbursements, such as
8 payments to the U.S. Treasury.⁷ Whenever the Committee was in danger of bouncing a
9 legitimately drawn check, Wu would deposit funds from his personal account or his businesses'
10 accounts to ensure that the Committee had enough money to cover its operating expenses.⁸ The
11 DA's Office also discovered that Wu was using the Committee's funds, at least in part, to pay
12 back a former employer for a previous embezzlement scheme that the employer had agreed not
13 to report to the police if Wu made restitution.⁹

14 In February 2016, Wu was arrested and charged with 3 counts of felony grand theft by
15 embezzlement and 21 counts of felony forgery for the crimes against the Committee and his

4 See Referral at 2-3.

5 Resp. at 1.

6 *Id.* at 2.

7 *Id.* For one example of how Wu disguised his unauthorized disbursements as payments to the U.S. Treasury, see the Committee's 2013 October Quarterly Reports. For that reporting period, Wu disclosed three payments to the U.S. Treasury for "payroll taxes." See Amended 2013 October Quarterly Report, Committee to Re-Elect Congressman Rohrabacher (Jan. 31, 2014). Two of the three disbursements were proper, but the third was actually a check that Wu wrote to himself. See Amended 2013 October Quarterly Report, Committee to Re-Elect Congressman Rohrabacher – NOW Rohrabacher for Congress (June 2, 2016) (changing one of the payroll-tax disbursements to an unauthorized disbursement to Wu).

8 Referral at 3 & Attachs. 2 (charts listing deposits made by Wu "to cover [u]nauthorized [w]ithdrawals"), 3 (communication dated July 13, 2015).

9 Resp. at 2.

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1 other former employer.¹⁰ One of the embezzlement counts alleged that “[o]n or about and
2 between February 18, 2009 and May 18, 2015,” Wu unlawfully took property from the
3 Committee. The other two charges stemmed from Wu’s embezzlement from his other employer.
4 The 21 forgery charges then alleged that Wu wrote and passed false checks.¹¹ Wu pled guilty to
5 all of the charges on January 17, 2017 and will be sentenced on March 13, 2017.¹² He had not
6 made any restitution to the Committee as of the date of the Referral.¹³

7 **B. The Committee’s Response to Wu’s Embezzlement**

8 In addition to reporting Wu’s activities to the Orange County DA’s Office, the
9 Committee informed the Commission that Wu had made unauthorized and undisclosed
10 disbursements and that, as a result, its disclosure reports were inaccurate. The Committee
11 contacted RAD on June 29, 2015 to announce that it had discovered Wu’s scheme and planned
12 to amend its reports to disclose his unauthorized activity. The Committee stated that it had
13 knowledge of Wu’s activities in 2014 and 2015, but was still working with the DA’s Office to
14 determine whether the embezzlement started before that—possibly as early as 2008. RAD
15 provided guidance to the Committee during this conversation and a subsequent conversation on

¹⁰ Felony Complaint Warrant, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct. Feb. 1, 2016) (“Criminal Complaint”); *see also* Docket, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct.) (last visited Jan. 19, 2017) (“Docket Report”) (stating that Wu was arraigned on February 3, 2016).

¹¹ Criminal Complaint, *supra* note 10. For each forgery charge, the complaint provided a date range for when Wu passed a specified false check. *See id.* Many of the ranges encapsulated dates on which the Committee reported unauthorized disbursements. *Compare id.*, with Referral, Attach. 2, and RAD Supplemental Memorandum (June 13, 2016), Attach. 1. It therefore appears that some of the false checks Wu passed were written from the Committee’s account.

¹² Docket Report, *supra* note 10. OGC also examined Wu’s written plea agreement, which was almost entirely a boilerplate form that Wu initialed to acknowledge his waiver of certain rights. *See* Advisement & Waiver of Rights for a Felony Guilty Plea, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct. Jan. 17, 2017) (“Plea Agreement”). Its “Factual Basis for Guilty Plea” did not provide any facts beyond those alleged in the complaint. *See id.*, Attach. A.

¹³ Resp. at 3. The Committee believes it is unlikely that Wu will ever be able to make full restitution of the stolen funds. *Id.*

1 July 13, 2015. During the July 13 conversation, the Committee indicated that it would file the
2 amended 2014 and 2015 reports that month.¹⁴

3 On July 15, 2015, the Committee filed an Amended 2015 April Quarterly Report.¹⁵ It did
4 not file any other amended reports at that time. RAD followed up with the Committee in March
5 2016, and the Committee indicated that it was waiting for the DA's investigation to conclude
6 before it filed anything related to pre-2014 reporting periods. On April 1, 2016, RAD attempted
7 to clarify what the Committee meant, as it had not yet filed amended reports addressing 2014,
8 but the Committee did not respond.¹⁶

9 On April 14, 2016, RAD referred this matter to OGC and OGC notified the Committee of
10 the referral.¹⁷ The Committee then filed a Form 99 stating that the cash-on-hand balance
11 disclosed on its 2014 Year-End Report was incorrect due to its treasurer making unauthorized
12 expenditures.¹⁸ On June 2, 2016, the Committee filed amended reports for all of 2014, and
13 amended its 2013 October Quarterly and Year-End Reports. The 2013, 2014, and 2015 reports
14 revealed, in total, \$39,095.79 of deposits from Wu's accounts and \$226,425.48 of unauthorized
15 disbursements. Below is a list of the amount of unauthorized activity disclosed on each amended
16 report and the original July 2015 Quarterly Report.¹⁹

17

¹⁴ Referral at 2-3.

¹⁵ Amended 2015 April Quarterly Report, Rohrabacher for Congress (July 15, 2016).

¹⁶ Referral at 3-4.

¹⁷ *Id.* at 1; Notification Letters (Apr. 22, 2016).

¹⁸ Miscellaneous Text (FEC Form 99), Rohrabacher for Congress (Apr. 25, 2016).

¹⁹ Referral, Attach. 2 (providing charts showing the unauthorized activity disclosed on the Committee's Amended 2015 April Quarterly Report and 2015 July Quarterly Report); RAD Supplemental Memorandum at 1 & Attach. 1 (providing the total amount of unauthorized activity and charts showing the unauthorized activity disclosed on the Committee's 2013 and 2014 amended reports).

Amended Report	Deposits from Wu's Accounts	Unauthorized Disbursements
2013 October Quarterly	\$0	\$1,859.24
2013 Year-End	\$0	\$16,733.16
2014 April Quarterly	\$0	\$29,572.68
2014 12-Day Pre-Primary	\$0	\$13,334.27
2014 July Quarterly	\$0	\$27,583.40
2014 April Quarterly	\$0	\$63,228.61
2014 12 Day Pre-General	\$0	\$7,015.12
2014 30 Day Post-General	\$0	\$19,316.58
2014 Year-End	\$1,829.91	\$12,437.99
2015 April Quarterly	\$25,900.00	\$25,594.43
2015 July Quarterly (original)	\$11,365.88	\$9,750.00
TOTAL	\$39,095.79	\$226,425.48

1 In its July 2016 Response to the Referral, the Committee also explained that it made
2 internal changes to prevent future embezzlement. The Committee opened a new bank account,
3 hired a well-regarded campaign reports specialist to take over as treasurer, and "implemented
4 review of the Committee's reports in accordance with the Commission's recommendations of
5 methods to prevent unauthorized withdrawals of committee funds." Specifically, the Committee
6 now has more than one person review and reconcile the Committee's bank account;
7 Rohrabacher's wife receives regular account updates; and the Committee regularly reviews its
8 deposits, withdrawals, and bank balances.²⁰

9 III. LEGAL ANALYSIS

10 The Act requires a committee, through its treasurer, to keep an accurate account of
11 receipts, disbursements, and cash-on-hand balances.²¹ To accomplish this, the Act imposes on
12 committees a series of recordkeeping and reporting requirements to be executed by the
13 committee's treasurer. The Act provides that committees must record the name and address of
14 every person to whom a disbursement is made, and the date, amount, and purpose of the

²⁰ Resp. at 1-2.

²¹ 52 U.S.C. §§ 30102(c), 30104(b); 11 C.F.R. §§ 104.3, 104.14(d).

1 disbursement, and retain records (*e.g.*, receipt, cancelled check, invoice) related to each

2 disbursement in excess of \$200.²²

3 Committee reports must disclose: (1) the amount of cash-on-hand at the start of the
4 reporting period; (2) the total amount of receipts; (3) the identity of any person who contributes
5 more than \$200 in the election cycle, and the date and amount of his contribution(s); (4) the total
6 amount of disbursements; (5) the identity of any person to whom the committee disburses over
7 \$200 during the election cycle, together with the date, amount, and purpose of the
8 expenditure(s); and (6) the amount of cash-on-hand at the close of the reporting period.²³

9 The Act also states that a committee's funds "shall be segregated from, and may not be
10 commingled with, the personal funds of any individual."²⁴ Relatedly, the Act prohibits
11 individuals from converting contributions to a political committee for personal use.²⁵ "Personal
12 use" means any use of funds in a campaign account of a federal candidate to fulfill a
13 commitment, obligation, or expense of any person that would exist irrespective of the
14 candidate's campaign.²⁶

15 **A. The Committee's Liability**

16 When determining the extent of a committee's liability, the Commission has examined
17 whether the embezzlement resulted from the committee's failure to implement adequate control

²² 52 U.S.C. § 30102(c)(5); 11 C.F.R. § 102.9(b)(1)-(2).

²³ 52 U.S.C. § 30104(b)(1)-(6); 11 C.F.R. § 104.3(a)-(b); *see also* Fed. Election Comm'n, Form 3 Report of Receipts and Disbursements for an Authorized Committee (May 2016).

²⁴ 52 U.S.C. § 30102(b)(3); 11 C.F.R. § 102.15.

²⁵ 52 U.S.C. § 30114(b)(1).

²⁶ *Id.* § 30114(b)(2).

1 procedures over committee finances.²⁷ In its *Statement of Policy: Safe Harbor for Misreporting*
2 *Due to Embezzlement*, the Commission stated that it would not seek a monetary penalty against a
3 committee if the committee had certain minimal internal controls in place at the time of the
4 embezzlement and took certain steps after discovering the embezzlement.²⁸

5 The controls listed in the policy statement are: (1) opening all bank accounts in the name
6 of the committee using its Employer Identification Number; (2) monthly bank statements are
7 reviewed for unauthorized transactions and reconciled by someone other than the individual with
8 check signing authority or who has responsibility for the committee's accounting; (3) dual-
9 signing authority for checks over \$1,000; (4) procedures for handling incoming receipts by
10 someone other than the individuals with accounting or banking authority; and (5) safeguards for
11 managing a petty cash account. After the discovery of embezzlement, the policy statement also
12 requires the committee to notify law enforcement and the Commission, and file amended
13 Commission reports to correct any inaccuracies. If the committee follows some, but not all of
14 these practices, or has other comparable safeguards, the Commission will consider those
15 measures as mitigating factors when determining the committee's monetary liability.²⁹

16 Due to Wu's misappropriations and efforts to conceal his illegal enterprise, the
17 Committee failed to maintain complete financial records and make accurate disclosures to the
18 Commission. As detailed above, the Committee filed amended reports revealing that its

²⁷ See, e.g., Factual & Legal Analysis at 20, MUR 6922 (ACA International Political Action Committee); Factual & Legal Analysis at 4, MUR 5923 (American Dream PAC); Factual & Legal Analysis at 4, MUR 5920 (Women's Campaign Fund).

²⁸ Statement of Policy: Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16,695, 16,695 (Apr. 5, 2007).

²⁹ *Id.* One source for a listing of approved alternative safeguards is the Commission's guidance document on internal controls. See *Internal Controls and Political Committees*, FED. ELECTION COMM'N, http://www.fec.gov/law/policy/guidance/internal_controls_polcmtes_07.pdf (last visited Feb. 2, 2017).

1 statement of receipts, disbursements, and cash-on-hand balances had been incorrect on ten of its
2 2013, 2014, and 2015 reports.³⁰ Based on the fact that Wu had to provide the Committee with a
3 record of his unauthorized activity, and that the DA's Office had to undertake a time-consuming
4 forensic audit to assess the extent of the embezzlement scheme, it also seems that the Committee
5 did not have records of Wu's deposits and disbursements.³¹

6 Furthermore, based on the information in the record, it appears that the Committee did
7 not have in place many of the relevant internal controls from the Commission's *Safe Harbor*
8 policy statement. While the Committee reported Wu's embezzlement to law enforcement and to
9 the Commission, and filed amended reports, it apparently did not have more than one person
10 review and reconcile its bank account, have dual-signing authority for disbursement checks over
11 \$1,000, or require someone other than Wu to process incoming receipts.³²

12 In light of the Committee's apparent failure to maintain adequate internal controls, we
13 recommend that the Commission open a MUR and find reason to believe that the Committee
14 violated 52 U.S.C. §§ 30102(c) and 30104(b) by keeping inaccurate records and filing inaccurate
15 reports. We also recommend that the Commission initiate a limited investigation, as discussed
16 below, to assess the amount in violation and whether the Committee has fully disclosed all of
17 Wu's unauthorized activity.³³

³⁰ See Referral, Attach. 2; RAD Supplemental Memorandum, Attach. 1.

³¹ See Referral at 3; Resp. at 2.

³² See Referral, Attach. 2 (establishing that many of the disbursements Wu made to himself were for amounts over \$1,000); Resp. at 1-2.

³³ In recent years, the Commission has routinely referred committees affected by embezzlement to the Office of Alternative Dispute Resolution ("ADR"). See, e.g., Certification, RRs 15L-03, 15L-12 & 15L-16 (McConnell Senate Committee/Pate) (Oct. 30, 2015); Certification, RRs 12L-39, 12L-44, 12L-46 & 12L-71 (Richardson for Congress); Certification, MUR 6768 (Doherty); Notification, Pre-MUR 526 (Geoff Davis for Congress). As discussed below, we are not recommending transfer to ADR at this time because the record is not complete as to the amount in violation or the extent of the Committee's reporting violations.

B. Wu's Liability

According to the Commission's *Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings*, a former treasurer may be named as a respondent in his personal capacity when it appears that he, while serving as treasurer, may have knowingly and willfully violated the Act or regulations.³⁴ A violation of the Act is knowing and willful when the "acts were committed with full knowledge of all the relevant facts and a recognition that the action is prohibited by law."³⁵ This does not require proving knowledge of the specific statute or regulation the respondent allegedly violated.³⁶ Rather, it is sufficient to demonstrate that a respondent "acted voluntarily and was aware that his conduct was unlawful."³⁷ This awareness may be shown through circumstantial evidence, such as a "defendant's elaborate scheme for disguising" her actions, or other "facts and circumstances from which the jury reasonably could infer [the defendant] knew her conduct was unauthorized and illegal."³⁸

It is undisputed that, while serving as treasurer for the Committee, Wu withdrew at least \$226,425 of Committee funds and did not disclose the withdrawals on reports filed with the Commission. Wu signed each Committee report filed between October 2013 and April 2015,³⁹

³⁴ Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 5 (Jan. 3, 2005).

³⁵ 122 Cong. Rec. H3778 (daily ed. May 3, 1976).

³⁶ See *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (citing *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish that a violation is willful, the government needs to show only that the defendant acted with knowledge that her conduct was unlawful, not knowledge of the specific statutory provision violated)).

³⁷ *Id.* (internal quotation marks omitted).

³⁸ *United States v. Hopkins*, 916 F.2d 207, 213-15 (5th Cir. 1990) (internal quotation marks omitted). As the *Hopkins* court noted, "It has long been recognized that 'efforts at concealment [may] be reasonably explainable only in terms of motivation to evade' lawful obligations." *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

³⁹ See Reports, 2013-2015, Rohrabacher for Congress. By signing the reports, Wu certified that "to the best of [his] knowledge and belief," each report was "true, correct and complete." *Id.*

1 and a comparison of the Committee's original and amended reports during that time period
2 reveals that he falsified the amount of cash-on-hand, omitted contributions and disbursements,
3 and provided false information about the recipient and purpose of certain disbursements.⁴⁰ The
4 elaborate steps Wu took to conceal his misappropriation of funds is evidence that he "acted
5 voluntarily and was aware that his conduct was unlawful."⁴¹ Even more definitively, in pleading
6 guilty to the forgery charges, Wu admitted that he acted "with the intent to defraud" and that he
7 knew the checks he passed were false.⁴² We therefore conclude that Wu knowingly and willfully
8 violated 52 U.S.C. § 30104(b) by failing to file accurate reports with the Commission.

9 We also conclude that Wu knowingly and willfully violated 52 U.S.C. § 30102(c) by
10 failing to keep an account of disbursements made from the Committee's funds. As noted above,
11 the Committee did not appear to have a record of Wu's unauthorized activity until Wu and the
12 DA's Office provided a list of the unauthorized disbursements.⁴³

13 Additionally, by using Committee funds to pay restitution to his previous employer for
14 another embezzlement scheme, Wu knowingly and willfully violated 52 U.S.C. § 30114(b)(1) by
15 converting Committee funds to personal use. As the restitution payments were an obligation
16 completely unrelated to Rohrabacher's campaign, Wu's payments resulted in his "personal use"
17 of Committee funds.⁴⁴

⁴⁰ See Referral, Attach. 2; RAD Supplemental Memorandum, Attach. 1; Resp. at 2.

⁴¹ *Hopkins*, 916 F.2d at 214-15; *Danielczyk*, 917 F. Supp. 2d at 579.

⁴² Criminal Complaint, *supra* note 10; Plea Agreement, Attach. A, *supra* note 12.

⁴³ See Referral at 3; Resp. at 2.

⁴⁴ 52 U.S.C. § 30114(b)(2).

1 Finally, Wu knowingly and willfully violated 52 U.S.C. § 30102(b)(3) by commingling
2 personal and Committee funds.⁴⁵ By depositing funds from his personal and business accounts
3 into the Committee's account, he commingled funds within the Committee's account.⁴⁶
4 Likewise, by writing checks to himself and his businesses, he likely commingled funds within
5 his own accounts.⁴⁷

6 In sum, we recommend that the Commission find reason to believe Wu knowingly and
7 willfully violated 52 U.S.C. §§ 30102(b)(3) and (c), 30104(b), and 30114(b)(1), and authorize a
8 limited investigation to ascertain the amount in violation and clarify the record concerning the
9 operation of Wu's embezzlement scheme.

⁴⁵ In recent matters, the Commission has enforced the Act's commingling provision against treasurers of candidate committees. *See, e.g.*, Factual & Legal Analysis, MUR 6867 (Telthorst); Factual & Legal Analysis, MUR 6597 (Durkee); *see also* Factual & Legal Analysis, MUR 5971 (Adams) (assistant treasurer).

⁴⁶ *See* Factual & Legal Analysis at 12-13, MUR 6179 (Ward) (finding reason to believe that a treasurer unlawfully commingled funds "by writing checks from his personal bank account and depositing them into committee accounts").

⁴⁷ While there is no direct evidence showing that Wu deposited the checks into his personal account rather than cashing them or endorsing them to another person, it is unlikely that he would make restitution to his former employer—who was obviously aware of his history of embezzlement—by cash or a check written from the Committee. The Commission has found reason to believe there was commingling based on inferences like this in past matters, or based on the simple fact that the treasurer wrote checks to himself. *See* Factual & Legal Analysis at 3, MUR 6768 (finding reason to believe that the treasurer commingled committee funds with personal funds based on evidence that he wrote himself checks so that he could afford his home mortgage and health insurance payments, and those payments were "unlikely to be paid in cash"); Factual & Legal Analysis at 2-3, MUR 5872 (Jane Hague for Congress) (making a reason-to-believe finding because the Respondent wrote checks to herself from the Committee, which was enough to conclude that she "likely . . . commingled some, if not almost all, of the embezzled funds"); Factual & Legal Analysis at 3, MUR 5811 (Doggett for US Congress) (making a commingling finding based on evidence that the Respondent wrote herself checks from the Committee so that she could pay personal bills).

1 **IV. PROPOSED INVESTIGATION**

2 An investigation is appropriate in this matter because certain facts about Wu's
3 embezzlement scheme and whether the Committee has fully disclosed the extent of Wu's activity
4 in its reports to the Commission remain unclear. While the Commission is in possession of
5 information strongly suggesting that Wu did not keep records of his unauthorized deposits and
6 disbursements, it would be useful to confirm this with the Committee and the DA's Office.
7 Similarly, an investigation would allow the Commission to confirm that Wu deposited checks
8 into his personal bank account or his business accounts and learn whether he used Committee
9 funds for purposes other than making restitution payments to his former employer. The
10 information in the Commission's possession at this time is sufficient for reason-to-believe
11 findings against the Committee and Wu, but it would be helpful to have a more robust record for
12 the purpose of drafting a conciliation agreement.⁴⁸

13 In addition, the DA's Office determined that Wu embezzled \$238,347.15 from the
14 Committee, while the Committee disclosed only \$226,425.48 of unauthorized disbursements on
15 its amended reports.⁴⁹ Wu also pled guilty to embezzling from the Committee from 2009 to
16 2015, while the Committee has only amended its reports for 2013 to 2015.⁵⁰ An investigation
17 would allow the Commission to determine an accurate amount in violation and whether the
18 Committee needs to amend any pre-2013 reports.

⁴⁸ "A 'reason to believe' finding by itself does not establish that the law has been violated. When the Commission later accepts a conciliation agreement with a respondent, the conciliation agreement speaks to the Commission's ultimate conclusions." Statement of Policy Regarding Commission Action in Matters at the Initial Stage in the Enforcement Process, 72 Fed. Reg. 12,545, 12,545 (Mar. 16, 2007).

⁴⁹ RAD Supplemental Memorandum at 1; Resp. at 2.

⁵⁰ Criminal Complaint, *supra* note 10; Docket Report, *supra* note 10; *see also* RAD Supplemental Memorandum at 1.

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1 We therefore propose a limited investigation to ascertain: (1) more information about
2 Wu's recordkeeping and how he transferred and spent the Committee's funds; (2) the reason for
3 the discrepancy between the DA's total of embezzled funds and the Committee's total of
4 embezzled funds, resulting in a concrete amount in violation; and (3) based on the reason for the
5 discrepancy, whether the Committee needs to file additional amended reports to fully disclose
6 Wu's unauthorized activity.⁵¹ Although we plan to use informal investigative methods, we
7 recommend that the Commission authorize the use of compulsory process, including orders to
8 submit written answers and subpoenas to produce documents, which we would use in the event
9 the parties do not cooperate in providing this information.

⁵¹ In RRs 15L-03, 15L-12 & 15L-16 (McConnell Senate Committee/Pate), the Commission's most recent embezzlement matter, the Commission moved directly to pre-probable-cause conciliation with the offending vendor and ADR with the committees. *See* Certification, RRs 15L-03, 15L-12 & 15L-16 (Oct. 30, 2015). In that matter, as in this one, there was (1) a discrepancy in the amount of unauthorized activity disclosed by one of the committees and the amount determined by law enforcement, and (2) committees that had not yet made a full disclosure of the unauthorized activity. First Gen. Counsel's Rpt. at 9, 11-13 ("First GCR"), RRs 15L-03, 15L-12 & 15L-16. However, we believe that the McConnell/Pate matter is distinguishable for two primary reasons.

First, Pate, a vendor who worked with the committees, had pled guilty to embezzling a specified amount of money. *Id.* at 3-4. Therefore, though there was a discrepancy in the amount of unauthorized activity discovered by one of the committees and the amount calculated by law enforcement, the Commission could use the amount in the plea agreement to calculate Pate's civil penalty. *Id.* at 14-15. In this matter, however, Wu's plea agreement did not pinpoint an amount in violation. *Plea Agreement & Attach. A, supra* note 12. Presumably, the court will determine an amount during Wu's sentencing hearing, for purposes of ordering restitution, but the sentencing hearing has not occurred. Docket Report, *supra* note 10.

Second, Pate's indictment, to which he pled guilty, contained a detailed factual section that revealed how he carried out the embezzlement scheme. First GCR at 3-4, RRs 15L-03, 15L-12 & 15L-16. Because Wu's complaint and plea agreement, on the other hand, are almost completely devoid of factual content, we cannot rely on them to definitively determine how Wu used the Committee's funds and whether he commingled Committee funds by depositing them into his or his businesses' accounts. *See* Criminal Complaint, *supra* note 10; *Plea Agreement & Attach. A, supra* note 12. This problem is compounded by the fact that Wu did not file a response and the Committee's Response was cursory. *See* Resp.

Therefore, because the instant matter has more gaps in the record than the McConnell/Pate MUR, and because Wu's criminal case has not ended, we recommend proceeding with an investigation.

V. RECOMMENDATIONS

1. Open a MUR;
2. Find reason to believe that Rohrabacher for Congress and Jen Slater in her official capacity as treasurer violated 52 U.S.C. §§ 30102(c) and 30104(b) and 11 C.F.R. §§ 102.9 and 104.3;
3. Find reason to believe that Jack Wu knowingly and willfully violated 52 U.S.C. §§ 30102(b)(3) and (c), 30104(b), and 30114(b)(1) and 11 C.F.R. §§ 102.9, 102.15, and 104.3;
4. Authorize the use of compulsory process, as necessary;
5. Approve the attached Factual and Legal Analyses; and
6. Approve the appropriate letters.

Lisa J. Stevenson
Acting General Counsel

2-2-17
Date

Kathleen M. Guith
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Attachments

1. Factual and Legal Analysis for Rohrabacher for Congress and Jen Slater in her official capacity as treasurer
2. Factual and Legal Analysis for Jack Wu

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENTS: Rohrabacher for Congress and Jen Slater RR 16L-06
in her official capacity as treasurer

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities, pursuant to 52 U.S.C. § 30109(a)(2). Based on this information, the Commission finds reason to believe that Rohrabacher for Congress and Jen Slater in her official capacity as treasurer (the "Committee") failed to maintain complete financial records and filed inaccurate disclosure reports to the Commission, in violation of 52 U.S.C. §§ 30102(c) and 30104(b) of the Federal Election Campaign Act of 1971, as amended (the "Act").

II. FACTUAL AND LEGAL ANALYSIS

A. Wu's Embezzlement Scheme

The Committee is the principal campaign committee for longtime California Congressman Dana Rohrabacher. In 2005, Jack Wu became treasurer of the Committee.¹

On or about May 20, 2015, the Committee's new fundraising vendor discovered a significant discrepancy between the cash on hand reported by Wu in the Committee's most recent disclosure report (\$190,872) and the actual balance in the Committee's bank account (\$87).² After a brief investigation, the Committee confirmed that Wu had been making

¹ Amended Statement of Organization, Committee to Re-Elect Congressman Dana Rohrabacher (Feb. 24, 2005) (amending the treasurer information to name Wu as the treasurer).

² RAD Referral of Rohrabacher for Congress, 16L-06 (Apr. 14, 2016) ("Referral") at 3; Resp. at 2 (July 20, 2016).

1 unauthorized disbursements.³ Wu admitted that he had misappropriated funds and eventually
2 gave the Committee a spreadsheet summarizing unauthorized activity in the amount of \$173,500
3 during 2014 and 2015.⁴ The Committee fired Wu and filed a complaint against him with the
4 Orange County District Attorney's Office (the "DA's Office" or "DA").⁵

5 After an investigation and forensic audit of the Committee, the DA's Office concluded
6 that Wu had embezzled \$238,347.15 from the Committee by writing checks to himself and his
7 companies, "W. Jane Company" and "Wubell."⁶ For the most part, Wu concealed his scheme by
8 failing to disclose his unauthorized withdrawals on the Committee's reports; although, on
9 occasion, he would disclose his withdrawals as seemingly legitimate disbursements, such as
10 payments to the U.S. Treasury.⁷ Whenever the Committee was in danger of bouncing a
11 legitimately drawn check, Wu would deposit funds from his personal account or his businesses'
12 accounts to ensure that the Committee had enough money to cover its operating expenses.⁸ The
13 DA's Office also discovered that Wu was using the Committee's funds, at least in part, to pay
14 back a former employer for a previous embezzlement scheme that the employer had agreed not
15 to report to the police if Wu made restitution.⁹

³ Resp. at 2.

⁴ See Referral at 2-3.

⁵ Resp. at 1.

⁶ *Id.* at 2.

⁷ *Id.* For one example of how Wu disguised his unauthorized disbursements as payments to the U.S. Treasury, see the Committee's 2013 October Quarterly Reports. For that reporting period, Wu disclosed three payments to the U.S. Treasury for "payroll taxes." See Amended 2013 October Quarterly Report, Committee to Re-Elect Congressman Rohrabacher (Jan. 31, 2014). Two of the three disbursements were proper, but the third was actually a check that Wu wrote to himself. See Amended 2013 October Quarterly Report, Committee to Re-Elect Congressman Rohrabacher – NOW Rohrabacher for Congress (June 2, 2016) (changing one of the payroll-tax disbursements to an unauthorized disbursement to Wu).

⁸ Referral at 3 & Attach. 2 (charts listing deposits made by Wu "to cover [u]nauthorized [w]ithdrawals").

⁹ Resp. at 2.

1 In February 2016, Wu was arrested and charged with 3 counts of felony grand theft by
2 embezzlement and 21 counts of felony forgery for the crimes against the Committee and his
3 other former employer.¹⁰ One of the embezzlement counts alleged that “[o]n or about and
4 between February 18, 2009 and May 18, 2015,” Wu unlawfully took property from the
5 Committee. The other two charges stemmed from Wu’s embezzlement from his other employer.
6 The 21 forgery charges then alleged that Wu wrote and passed false checks.¹¹ Wu pled guilty to
7 all of the charges on January 17, 2017 and will be sentenced on March 13, 2017.¹² He had not
8 made any restitution to the Committee as of the date of the Referral.¹³

9 **B. The Committee’s Response to Wu’s Embezzlement**

10 In addition to reporting Wu’s activities to the Orange County DA’s Office, the
11 Committee informed the Commission that Wu had made unauthorized and undisclosed
12 disbursements and that, as a result, its disclosure reports were inaccurate. The Committee
13 contacted the Reports Analysis Division (“RAD”) on June 29, 2015 to announce that it had
14 discovered Wu’s scheme and planned to amend its reports to disclose his unauthorized activity.
15 The Committee stated that it had knowledge of Wu’s activities in 2014 and 2015, but was still

¹⁰ Felony Complaint Warrant, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct. Feb. 1, 2016) (“Criminal Complaint”); *see also* Docket, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct.) (last visited Jan. 19, 2017) (“Docket Report”) (stating that Wu was arraigned on February 3, 2016).

¹¹ Criminal Complaint, *supra* note 10. For each forgery charge, the complaint provided a date range for when Wu passed a specified false check. *See id.* Many of the ranges encapsulated dates on which the Committee reported unauthorized disbursements. *Compare id.*, with Referral, Attach. 2, and RAD Supplemental Memorandum (June 13, 2016), Attach. 1. It therefore appears that some of the false checks Wu passed were written from the Committee’s account.

¹² Docket Report, *supra* note 10. The Commission also examined Wu’s written plea agreement, which was almost entirely a boilerplate form that Wu initialed to acknowledge his waiver of certain rights. *See* Advisement & Waiver of Rights for a Felony Guilty Plea, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct. Jan. 17, 2017) (“Plea Agreement”). Its “Factual Basis for Guilty Plea” did not provide any facts beyond those alleged in the complaint. *See id.*, Attach. A.

¹³ Resp. at 3. The Committee believes it is unlikely that Wu will ever be able to make full restitution of the stolen funds. *Id.*

1 working with the DA's Office to determine whether the embezzlement started before that—
2 possibly as early as 2008. RAD provided guidance to the Committee during this conversation
3 and a subsequent conversation on July 13, 2015. During the July 13 conversation, the
4 Committee indicated that it would file the amended 2014 and 2015 reports that month.¹⁴

5 On July 15, 2015, the Committee filed an Amended 2015 April Quarterly Report.¹⁵ It did
6 not file any other amended reports at that time. RAD followed up with the Committee in March
7 2016, and the Committee indicated that it was waiting for the DA's investigation to conclude
8 before it filed anything related to pre-2014 reporting periods. On April 1, 2016, RAD attempted
9 to clarify what the Committee meant, as it had not yet filed amended reports addressing 2014,
10 but the Committee did not respond.¹⁶

11 On April 14, 2016, RAD referred this matter to the Office of General Counsel ("OGC")
12 and OGC notified the Committee of the referral.¹⁷ The Committee then filed a Form 99 stating
13 that the cash-on-hand balance disclosed on its 2014 Year-End Report was incorrect due to its
14 treasurer making unauthorized expenditures.¹⁸ On June 2, 2016, the Committee filed amended
15 reports for all of 2014, and amended its 2013 October Quarterly and Year-End Reports. The
16 2013, 2014, and 2015 reports revealed, in total, \$39,095.79 of deposits from Wu's accounts and
17 \$226,425.48 of unauthorized disbursements. Below is a list of the amount of unauthorized
18 activity disclosed on each amended report and the original July 2015 Quarterly Report.¹⁹

¹⁴ Referral at 2-3.

¹⁵ Amended 2015 April Quarterly Report, Rohrabacher for Congress (July 15, 2016).

¹⁶ Referral at 3-4.

¹⁷ *Id.* at 1; Notification Letters (Apr. 22, 2016).

¹⁸ Miscellaneous Text (FEC Form 99), Rohrabacher for Congress (Apr. 25, 2016).

¹⁹ Referral, Attach. 2 (providing charts showing the unauthorized activity disclosed on the Committee's Amended 2015 April Quarterly Report and 2015 July Quarterly Report); RAD Supplemental Memorandum at 1 &

Amended Report	Deposits from Wu's Accounts	Unauthorized Disbursements
2013 October Quarterly	\$0	\$1,859.24
2013 Year-End	\$0	\$16,733.16
2014 April Quarterly	\$0	\$29,572.68
2014 12-Day Pre-Primary	\$0	\$13,334.27
2014 July Quarterly	\$0	\$27,583.40
2014 April Quarterly	\$0	\$63,228.61
2014 12 Day Pre-General	\$0	\$7,015.12
2014 30 Day Post-General	\$0	\$19,316.58
2014 Year-End	\$1,829.91	\$12,437.99
2015 April Quarterly	\$25,900.00	\$25,594.43
2015 July Quarterly (original)	\$11,365.88	\$9,750.00
TOTAL	\$39,095.79	\$226,425.48

In its July 2016 Response to the Referral, the Committee also explained that it made internal changes to prevent future embezzlement. The Committee opened a new bank account, hired a well-regarded campaign reports specialist to take over as treasurer, and "implemented review of the Committee's reports in accordance with the Commission's recommendations of methods to prevent unauthorized withdrawals of committee funds." Specifically, the Committee now has more than one person review and reconcile the Committee's bank account; Rohrabacher's wife receives regular account updates; and the Committee regularly reviews its deposits, withdrawals, and bank balances.²⁰

C. Legal Analysis

The Act requires a committee, through its treasurer, to keep an accurate account of receipts, disbursements, and cash-on-hand balances.²¹ To accomplish this, the Act imposes on committees a series of recordkeeping and reporting requirements to be executed by the committee's treasurer. The Act provides that committees must record the name and address of

Attach. 1 (providing the total amount of unauthorized activity and charts showing the unauthorized activity disclosed on the Committee's 2013 and 2014 amended reports).

²⁰ Resp. at 1-2.

²¹ 52 U.S.C. §§ 30102(c), 30104(b); 11 C.F.R. §§ 104.3, 104.14(d).

1 every person to whom a disbursement is made, and the date, amount, and purpose of the
2 disbursement, and retain records (e.g., receipt, cancelled check, invoice) related to each
3 disbursement in excess of \$200.²²

4 Committee reports must disclose: (1) the amount of cash-on-hand at the start of the
5 reporting period; (2) the total amount of receipts; (3) the identity of any person who contributes
6 more than \$200 in the election cycle, and the date and amount of his contribution(s); (4) the total
7 amount of disbursements; (5) the identity of any person to whom the committee disburses over
8 \$200 during the election cycle, together with the date, amount, and purpose of the
9 expenditure(s); and (6) the amount of cash-on-hand at the close of the reporting period.²³

10 The Act also states that a committee's funds "shall be segregated from, and may not be
11 commingled with, the personal funds of any individual."²⁴ Relatedly, the Act prohibits
12 individuals from converting contributions to a political committee for personal use.²⁵ "Personal
13 use" means any use of funds in a campaign account of a federal candidate to fulfill a
14 commitment, obligation, or expense of any person that would exist irrespective of the
15 candidate's campaign.²⁶

16 When determining the extent of a committee's liability, we have examined whether the
17 embezzlement resulted from the committee's failure to implement adequate control procedures

²² 52 U.S.C. § 30102(c)(5); 11 C.F.R. § 102.9(b)(1)-(2).

²³ 52 U.S.C. § 30104(b)(1)-(6); 11 C.F.R. § 104.3(a)-(b); *see also* Fed. Election Comm'n, Form 3 Report of Receipts and Disbursements for an Authorized Committee (May 2016).

²⁴ 52 U.S.C. § 30102(b)(3); 11 C.F.R. § 102.15.

²⁵ 52 U.S.C. § 30114(b)(1).

²⁶ *Id.* § 30114(b)(2).

1 over committee finances.²⁷ In its *Statement of Policy: Safe Harbor for Misreporting Due to*
2 *Embezzlement*, the Commission stated that it would not seek a monetary penalty against a
3 committee if the committee had certain minimal internal controls in place at the time of the
4 embezzlement and took certain steps after discovering the embezzlement.²⁸

5 The controls listed in the policy statement are: (1) opening all bank accounts in the name
6 of the committee using its Employer Identification Number; (2) monthly bank statements are
7 reviewed for unauthorized transactions and reconciled by someone other than the individual with
8 check signing authority or who has responsibility for the committee's accounting; (3) dual-
9 signing authority for checks over \$1,000; (4) procedures for handling incoming receipts by
10 someone other than the individuals with accounting or banking authority; and (5) safeguards for
11 managing a petty cash account. After the discovery of embezzlement, the policy statement also
12 requires the committee to notify law enforcement and the Commission, and file amended
13 Commission reports to correct any inaccuracies. If the committee follows some, but not all of
14 these practices, or has other comparable safeguards, the Commission will consider those
15 measures as mitigating factors when determining the committee's monetary liability.²⁹

16 Due to Wu's misappropriations and efforts to conceal his illegal enterprise, the
17 Committee failed to maintain complete financial records and make accurate disclosures to the
18 Commission. As detailed above, the Committee filed amended reports revealing that its

²⁷ See, e.g., Factual & Legal Analysis at 20, MUR 6922 (ACA International Political Action Committee); Factual & Legal Analysis at 4, MUR 5923 (American Dream PAC); Factual & Legal Analysis at 4, MUR 5920 (Women's Campaign Fund).

²⁸ Statement of Policy: Safe Harbor for Misreporting Due to Embezzlement, 72 Fed. Reg. 16,695, 16,695 (Apr. 5, 2007).

²⁹ *Id.* One source for a listing of approved alternative safeguards is the Commission's guidance document on internal controls. See *Internal Controls and Political Committees*, FED. ELECTION COMM'N, http://www.fec.gov/law/policy/guidance/internal_controls_polcmtes_07.pdf (last visited Feb. 2, 2017).

1. statement of receipts, disbursements, and cash-on-hand balances had been incorrect on ten of its
2 2013, 2014, and 2015 reports.³⁰ Based on the fact that Wu had to provide the Committee with a
3 record of his unauthorized activity, and that the DA's Office had to undertake a time-consuming
4 forensic audit to assess the extent of the embezzlement scheme, it also seems that the Committee
5 did not have records of Wu's deposits and disbursements.³¹

6 Furthermore, based on the information in the record, it appears that the Committee did
7 not have in place many of the relevant internal controls from the Commission's *Safe Harbor*
8 policy statement. While the Committee reported Wu's embezzlement to law enforcement and to
9 the Commission, and filed amended reports, it apparently did not have more than one person
10 review and reconcile its bank account, have dual-signing authority for disbursement checks over
11 \$1,000, or require someone other than Wu to process incoming receipts.³²

12 In light of the Committee's apparent failure to maintain adequate internal controls, the
13 Commission finds reason to believe that the Committee violated 52 U.S.C. §§ 30102(c) and
14 30104(b) by keeping inaccurate records and filing inaccurate reports.

³⁰ See Referral, Attach. 2; RAD Supplemental Memorandum, Attach. 1.

³¹ See Referral at 3; Resp. at 2.

³² See Referral, Attach. 2 (establishing that many of the disbursements Wu made to himself were for amounts over \$1,000); Resp. at 1-2.

FEDERAL ELECTION COMMISSION

FACTUAL AND LEGAL ANALYSIS

RESPONDENT: Jack Wu RR 16L-06

I. INTRODUCTION

This matter was generated based on information ascertained by the Federal Election Commission (the "Commission") in the normal course of carrying out its supervisory responsibilities, pursuant to 52 U.S.C. § 30109(a)(2). Based on this information, the Commission finds reason to believe that Jack Wu, the former treasurer of Rohrabacher for Congress (the "Committee"), knowingly and willfully violated 52 U.S.C. §§ 30102(b)(3) and (c), 30104(b), and 30114(b)(1) of the Federal Election Campaign Act of 1971, as amended (the "Act"), by converting Committee funds for personal use, commingling Committee funds with his own, and failing to keep complete records and file accurate reports with the Commission.

II. FACTUAL AND LEGAL ANALYSIS

A. Wu's Embezzlement Scheme

The Committee is the principal campaign committee for longtime California Congressman Dana Rohrabacher. In 2005, Wu became treasurer of the Committee.¹

The Commission has information indicating that, on or about May 20, 2015, the Committee's new fundraising vendor discovered a significant discrepancy between the cash on hand reported by Wu in the Committee's most recent disclosure report (\$190,872) and the actual balance in the Committee's bank account (\$87).² After a brief investigation, the Committee confirmed that Wu had been making unauthorized disbursements. Wu admitted that he had

¹ Amended Statement of Organization, Committee to Re-Elect Congressman Dana Rohrabacher (Feb. 24, 2005) (amending the treasurer information to name Wu as the treasurer).

² RAD Referral of Rohrabacher for Congress, 16L-06 (Apr. 14, 2016) ("Referral") at 3.

1 misappropriated funds and eventually gave the Committee a spreadsheet summarizing
2 unauthorized activity in the amount of \$173,500 during 2014 and 2015.³ The Committee fired
3 Wu and filed a complaint against him with the Orange County District Attorney's Office (the
4 "DA's Office" or "DA").

5 The Commission also has information establishing that, after an investigation and
6 forensic audit of the Committee, the DA's Office concluded that Wu had embezzled \$238,347.15
7 from the Committee by writing checks to himself and his companies, "W. Jane Company" and
8 "Wubell." For the most part, Wu concealed his scheme by failing to disclose his unauthorized
9 withdrawals on the Committee's reports; although, on occasion, he would disclose his
10 withdrawals as seemingly legitimate disbursements, such as payments to the U.S. Treasury.⁴
11 Whenever the Committee was in danger of bouncing a legitimately drawn check, Wu would
12 deposit funds from his personal account or his businesses' accounts to ensure that the Committee
13 had enough money to cover its operating expenses.⁵ The DA's Office also discovered that Wu
14 was using the Committee's funds, at least in part, to pay back a former employer for a previous
15 embezzlement scheme that the employer had agreed not to report to the police if Wu made
16 restitution.

17 In February 2016, Wu was arrested and charged with 3 counts of felony grand theft by
18 embezzlement and 21 counts of felony forgery for the crimes against the Committee and his

³ See *id.* at 2-3.

⁴ For one example of how Wu disguised his unauthorized disbursements as payments to the U.S. Treasury, see the Committee's 2013 October Quarterly Reports. For that reporting period, Wu disclosed three payments to the U.S. Treasury for "payroll taxes." See Amended 2013 October Quarterly Report, Committee to Re-Elect Congressman Rohrabacher (Jan. 31, 2014). Two of the three disbursements were proper, but the third was actually a check that Wu wrote to himself. See Amended 2013 October Quarterly Report, Committee to Re-Elect Congressman Rohrabacher – NOW Rohrabacher for Congress (June 2, 2016) (changing one of the payroll-tax disbursements to an unauthorized disbursement to Wu).

⁵ Referral at 3 & Attach. 2 (charts listing deposits made by Wu "to cover [u]nauthorized [w]ithdrawals").

1 other former employer.⁶ One of the embezzlement counts alleged that “[o]n or about and
2 between February 18, 2009 and May 18, 2015,” Wu unlawfully took property from the
3 Committee. The other two charges stemmed from Wu’s embezzlement from his other employer.
4 The 21 forgery charges then alleged that Wu wrote and passed false checks.⁷ Wu pled guilty to
5 all of the charges on January 17, 2017 and will be sentenced on March 13, 2017.⁸ The
6 Commission is aware of information indicating that he had not made any restitution to the
7 Committee as of the date of the Referral.

8 **B. The Committee’s Response to Wu’s Embezzlement**

9 In addition to reporting Wu’s activities to the Orange County DA’s Office, the
10 Committee informed the Commission that Wu had made unauthorized and undisclosed
11 disbursements and that, as a result, its disclosure reports were inaccurate.⁹ The Committee
12 eventually filed amended reports for all of 2014 and parts of 2013 and 2015. The 2013, 2014,
13 and 2015 reports revealed, in total, \$39,095.79 of deposits from Wu’s accounts and \$226,425.48

⁶ Felony Complaint Warrant, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct. Feb. 1, 2016) (“Criminal Complaint”); *see also* Docket, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct.) (last visited Jan. 19, 2017) (“Docket Report”) (stating that Wu was arraigned on February 3, 2016).

⁷ Criminal Complaint, *supra* note 6. For each forgery charge, the complaint provided a date range for when Wu passed a specified false check. *See id.* Many of the ranges encapsulated dates on which the Committee reported unauthorized disbursements. *Compare id.*, with Referral, Attach. 2, and RAD Supplemental Memorandum (June 13, 2016), Attach. 1. It therefore appears that some of the false checks Wu passed were written from the Committee’s account.

⁸ Docket Report, *supra* note 6. The Commission also examined Wu’s written plea agreement, which was almost entirely a boilerplate form that Wu initialed to acknowledge his waiver of certain rights. *See* Advisement & Waiver of Rights for a Felony Guilty Plea, *California v. Wu*, No. 16CF0269 (Orange Cnty. Super. Ct. Jan. 17, 2017) (“Plea Agreement”). Its “Factual Basis for Guilty Plea” did not provide any facts beyond those alleged in the complaint. *See id.*, Attach. A.

⁹ Referral at 2-3.

1 of unauthorized disbursements. Below is a list of the amount of unauthorized activity disclosed
2 on each amended report and the original July 2015 Quarterly Report.¹⁰

Amended Report	Deposits from Wu's Accounts	Unauthorized Disbursements
2013 October Quarterly	\$0	\$1,859.24
2013 Year-End	\$0	\$16,733.16
2014 April Quarterly	\$0	\$29,572.68
2014 12-Day Pre-Primary	\$0	\$13,334.27
2014 July Quarterly	\$0	\$27,583.40
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TOTAL	\$39,095.79	\$226,425.48

3 C. Legal Analysis

4 The Act requires a committee, through its treasurer, to keep an accurate account of
5 receipts, disbursements, and cash-on-hand balances.¹¹ To accomplish this, the Act imposes on
6 committees a series of recordkeeping and reporting requirements to be executed by the
7 committee's treasurer. The Act provides that committees must record the name and address of
8 every person to whom a disbursement is made, and the date, amount, and purpose of the
9 disbursement, and retain records (*e.g.*, receipt, cancelled check, invoice) related to each
10 disbursement in excess of \$200.¹²

11 Committee reports must disclose: (1) the amount of cash-on-hand at the start of the
12 reporting period; (2) the total amount of receipts; (3) the identity of any person who contributes

¹⁰ Referral, Attach. 2 (providing charts showing the unauthorized activity disclosed on the Committee's Amended 2015 April Quarterly Report and 2015 July Quarterly Report); RAD Supplemental Memorandum at 1 & Attach. 1 (providing the total amount of unauthorized activity and charts showing the unauthorized activity disclosed on the Committee's 2013 and 2014 amended reports).

¹¹ 52 U.S.C. §§ 30102(c), 30104(b); 11 C.F.R. §§ 104.3, 104.14(d).

¹² 52 U.S.C. § 30102(c)(5); 11 C.F.R. § 102.9(b)(1)-(2).

1 more than \$200 in the election cycle, and the date and amount of his contribution(s); (4) the total
2 amount of disbursements; (5) the identity of any person to whom the committee disburses over
3 \$200 during the election cycle, together with the date, amount, and purpose of the
4 expenditure(s); and (6) the amount of cash-on-hand at the close of the reporting period.¹³

5 The Act also states that a committee's funds "shall be segregated from, and may not be
6 commingled with, the personal funds of any individual."¹⁴ Relatedly, the Act prohibits
7 individuals from converting contributions to a political committee for personal use.¹⁵ "Personal
8 use" means any use of funds in a campaign account of a federal candidate to fulfill a
9 commitment, obligation, or expense of any person that would exist irrespective of the
10 candidate's campaign.¹⁶

11 According to the Commission's *Statement of Policy Regarding Treasurers Subject to*
12 *Enforcement Proceedings*, a former treasurer may be named as a respondent in his personal
13 capacity when it appears that he, while serving as treasurer, may have knowingly and willfully
14 violated the Act or regulations.¹⁷ A violation of the Act is knowing and willful when the "acts
15 were committed with full knowledge of all the relevant facts and a recognition that the action is
16 prohibited by law."¹⁸ This does not require proving knowledge of the specific statute or

¹³ 52 U.S.C. § 30104(b)(1)-(6); 11 C.F.R. § 104.3(a)-(b); *see also* Fed. Election Comm'n, Form 3 Report of Receipts and Disbursements for an Authorized Committee (May 2016).

¹⁴ 52 U.S.C. § 30102(b)(3); 11 C.F.R. § 102.15.

¹⁵ 52 U.S.C. § 30114(b)(1).

¹⁶ *Id.* § 30114(b)(2).

¹⁷ Statement of Policy Regarding Treasurers Subject to Enforcement Proceedings, 70 Fed. Reg. 3, 5 (Jan. 3, 2005).

¹⁸ 122 Cong. Rec. H3778 (daily ed. May 3, 1976).

1 regulation the respondent allegedly violated.¹⁹ Rather, it is sufficient to demonstrate that a
2 respondent “acted voluntarily and was aware that his conduct was unlawful.”²⁰ This awareness
3 may be shown through circumstantial evidence, such as a “defendant’s elaborate scheme for
4 disguising” her actions, or other “facts and circumstances from which the jury reasonably could
5 infer [the defendant] knew her conduct was unauthorized and illegal.”²¹

6 It is undisputed that, while serving as treasurer for the Committee, Wu withdrew at least
7 \$226,425 of Committee funds and did not disclose the withdrawals on reports filed with the
8 Commission. Wu signed each Committee report filed between October 2013 and April 2015,²²
9 and a comparison of the Committee’s original and amended reports during that time period
10 reveals that he falsified the amount of cash-on-hand, omitted contributions and disbursements,
11 and provided false information about the recipient and purpose of certain disbursements.²³ The
12 elaborate steps Wu took to conceal his misappropriation of funds is evidence that he “acted
13 voluntarily and was aware that his conduct was unlawful.”²⁴ Even more definitively, in pleading
14 guilty to the forgery charges, Wu admitted that he acted “with the intent to defraud” and that he

¹⁹ See *United States v. Danielczyk*, 917 F. Supp. 2d 573, 579 (E.D. Va. 2013) (citing *Bryan v. United States*, 524 U.S. 184, 195 & n.23 (1998) (holding that, to establish that a violation is willful, the government needs to show only that the defendant acted with knowledge that her conduct was unlawful, not knowledge of the specific statutory provision violated)).

²⁰ *Id.* (internal quotation marks omitted).

²¹ *United States v. Hopkins*, 916 F.2d 207, 213-15 (5th Cir. 1990) (internal quotation marks omitted). As the *Hopkins* court noted, “It has long been recognized that ‘efforts at concealment [may] be reasonably explainable only in terms of motivation to evade’ lawful obligations.” *Id.* at 214 (quoting *Ingram v. United States*, 360 U.S. 672, 679 (1959)).

²² See Reports, 2013-2015, Rohrabacher for Congress. By signing the reports, Wu certified that “to the best of [his] knowledge and belief,” each report was “true, correct and complete.” *Id.*

²³ See Referral, Attach. 2; RAD Supplemental Memorandum, Attach. 1.

²⁴ *Hopkins*, 916 F.2d at 214-15; *Danielczyk*, 917 F. Supp. 2d at 579.

1 knew the checks he passed were false.²⁵ We therefore conclude that Wu knowingly and willfully
2 violated 52 U.S.C. § 30104(b) by failing to file accurate reports with the Commission.

3 Wu knowingly and willfully violated 52 U.S.C. § 30102(c) by failing to keep an account
4 of disbursements made from the Committee's funds. As referenced above, the Committee did
5 not appear to have a record of Wu's unauthorized activity until Wu and the DA's Office
6 provided a list of the unauthorized disbursements.²⁶

7 Additionally, by using Committee funds to pay restitution to his previous employer for
8 another embezzlement scheme, Wu knowingly and willfully violated 52 U.S.C. § 30114(b)(1) by
9 converting Committee funds to personal use. As the restitution payments were an obligation
10 completely unrelated to Rohrabacher's campaign, Wu's payments resulted in his "personal use"
11 of Committee funds.²⁷

12 Finally, Wu knowingly and willfully violated 52 U.S.C. § 30102(b)(3) by commingling
13 personal and Committee funds. By depositing funds from his personal and business accounts
14 into the Committee's account, he commingled funds within the Committee's account.²⁸
15 Likewise, by writing checks to himself and his businesses, he likely commingled funds within
16 his own accounts.

17 In sum, the Commission finds reason to believe Wu knowingly and willfully violated 52
18 U.S.C. §§ 30102(b)(3) and (c), 30104(b), and 30114(b)(1) by converting Committee funds for

²⁵ Criminal Complaint, *supra* note 6; Plea Agreement, Attach. A, *supra* note 8.

²⁶ See Referral at 3.

²⁷ 52 U.S.C. § 30114(b)(2).

²⁸ See Factual & Legal Analysis at 12-13, MUR 6179 (Ward) (finding reason to believe that a treasurer unlawfully commingled funds "by writing checks from his personal bank account and depositing them into committee accounts").

- 1 personal use, commingling Committee funds with his own, and failing to keep complete records
- 2 and file accurate reports with the Commission.

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